IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 15TH DECEMBER 2006 / 24TH AGRAHAYANA 1928

Crl.MC.No. 3403 of 2006()

CC.2502/2003 of CHIEF JUDL.MAGISTRATE, ERNAKULAM

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PETITIONER: IST ACCUSED

JAI PRAKASH GOYAL, HOUSE NO.14/134-A,
SANDO GOPALAN ROAD, CHULLICKAL,
KOCHI-682 005.

BY ADV. SRI.PHILIP T.VARGHESE
SRI.N.SASI

RESPONDENTS: COMPLAINANT AND STATE

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1. LIC HOUSING FINANCE LTD., 9TH FLOOR,
JEEVAN PRAKASH BUILDING, M.C.ROAD,
ERNAKULAM REPRESENTED BY ITS AREA MANAGER
AND PRINCIPAL OFFICER OF THE COMPANY,
P.RADHAKRISHNAN.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.A. AKBAR.
SRI.P.K.JOSE
SRI.P.D.JOSEPH (PERAYIL)

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 15/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 3403 OF 2006

Dated this the 15th day of December, 2006

ORDER

The petitioner is the 1st accused in a prosecution under Sec.138 of the N.I. Act. The petitioner is the partner of a firm which issued the cheque. On behalf of the firm i.e., the 3rd accused, the 2nd accused had signed the cheque. The 1st accused, without dispute, is the partner of the firm. The liability to discharge the cheque which was issued was that of the petitioner personally. The cheque was issued to the complainant by the firm. The same was forwarded along with a covering letter issued by the petitioner which is produced as document No.4 along with the complaint.

2. The short grievance of the petitioner is that he is not the drawer of the cheque and therefore the principal liability under Sec.138 of the N.I. Act is not his. He contends that even with the help of Sec.141 of the N.I. Act, he cannot be mulcted with the culpable liability. He urges with the help of the averments in the complaint, that there is no specific averment that he is in charge of and responsible to the firm for the conduct of its affairs. Relying on the decision in

S.M.S. Pharmaceuticals Ltd., v. Neeta Bhalla ((2005) 8 SCC 89), the learned counsel for the petitioner contends that in the absence of such a specific averment, the petitioner is not liable to face trial.

3. I have been taken through the dictum in **S.M.S. Pharmaceuticals Ltd., v. Neeta Bhalla** ((2005) 8 SCC 89). According to me, it would be myopic to assume that the said decision insists that there must be ritualistic repetition of the words of Sec.141 of the N.I. Act in every complaint. The question is whether the materials placed before the court and the averments are sufficient to instill in the mind of the court the satisfaction that the petitioner is in charge and responsible to the drawer – firm for the conduct of its affairs. A couple of facts do appear to be significant. The petitioner is admittedly the partner of the firm. The liability to discharge which the cheque which is issued is personally that of the petitioner. The cheque has been forwarded to the complainant along with a covering letter of the petitioner. Altogether there are only two partners in the firm. Notice of demand, when received, did not evoke any response also.

4. I am, in these circumstances, satisfied that this is not, at

any rate, a fit case where the extraordinary inherent jurisdiction available to this Court under Sec.482 of the Cr.P.C. deserves to be invoked. The petitioner must be left to raise his contentions before the learned Magistrate.

5. The learned counsel for the petitioner submits that the entire cheque amount has already been paid and the prosecution now is reduced to an unnecessary formality. The learned counsel for the respondent/complainant does not accept this and submits that the liability is not discharged in full. It is not necessary for me to go into the question in detail. The petitioner can certainly substantiate that contention before the learned Magistrate.

6. The learned counsel for the petitioner then submits that a warrant of arrest has been issued against him and he apprehends that his application for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He therefore prays that directions may be issued under Sec.482 of the Cr.P.C. to the learned Magistrate to release the petitioner on bail when he appears and applies for bail. Every court must do the same. No special or specific directions appear to be necessary.

7. The learned counsel for the petitioner further submits that it would be unnecessary and harsh to insist on the personal appearance of the petitioner before the criminal court. The liability has been discharged. In the nature of the allegations, he may be permitted to appear through counsel, prays the learned counsel for the petitioner. I find that the said request is absolutely justified. I do not find any reason why the learned Magistrate should not consider the said request. I do not want now to say what order ought to be passed. I need only say that the learned Magistrate must consider the application for exemption from personal appearance of the petitioner in accordance with law, on merits and cognizant of the various circumstances that I have already adverted to above.

8. In the result, this Crl.M.C. is dismissed; but with the above observations. The mere pendency of a non-bailable warrant of arrest issued may not be held as sufficient reason not to consider the application for exemption on merits.

Sd/-

(R. BASANT, JUDGE)

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//true copy// **P.S. To Judge**